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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-5780

CELESTINO V. RIVAS and ZEFERINO C. SAMANIEGO, individually, and on behalf of all other persons similarly situated,

Appellants,

vs.

ROBERT C. COZENS, Director, California Department of Motor Vehicles, and KEITH BALL, Chief, Division of Drivers' Licenses,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Supplemental Brief in Reply to Appellants' Briefs of March 8, 1972, and March 15, 1972

APPENDICES NOT PRINTED

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Supplemental Brief in Reply to Appellants' Briefs of March 3, 1972, and March 13, 1972

ARGUMENT

I. The Rios Case Pending Before the California Supreme Court Is Explicitly Confined to the Constitutional Issues Raised by the Decisions of the United States Supreme Court and Thus Does Not Warrant This Court's Deferring Its Decision in the Present Case.

Appellants adamantly assert that the State Supreme Court's granting a hearing in the *Rios* case has reopened State issues. That such an assertion is little more than a

stratagem, is pointedly confirmed by the petition to the State Supreme Court for hearing in the *Rios* case. This petition *nowhere* mentions *State* grounds in support of its contentions. On the contrary, the petition does specifically state that the Department's duty "arises out of the due process clause of the Fourteenth Amendment to the *United States Constitution.*"[1]

The petition has cited the four State Supreme Court decisions occurring after *Orr v. Superior Court,* 71 Cal. 2d 220; 454 P.2d 712 (the Court's 1969 decision construing the Financial Responsibility Law), to persuade the State court to re-examine its holding in *Orr: Randone v. Appellate Department,* 5 Cal. 3d 536; 488 P.2d 13; *Blair v. Pitchess,* 5 Cal. 3d 258; 486 P.2d 1242; *Cline v. Credit Bureau of Santa Clara Valley,* 1 Cal. 3d 908; 464 P.2d 125; *McCallop v. Carberry,* 1 Cal. 3d 903; 464 P.2d 122. (petition ¶ VII. See also petition pages 11, 13 and 19). These cases declared invalid various State statutes which allowed prejudgment attachments without a hearing. The speciousness of appellants' contention that State grounds have been reopened because the California Supreme Court granted hearing in *Rios* becomes apparent, however, when it is noted that the State Supreme Court explicitly declared, in each one of these four cases, that it was the *United States* Supreme Court's construction of the due process clause in *Sniadach v. Family Finance Corp.,* 395 U.S. 337 (1969), that compelled the invalidation of the State statutes. For example in *McCallop* the court said: "We are persuaded that this type of prejudgment wage garnishment falls within the rationale of *Sniadach,* and must be held to constitute a taking of property in violation of procedural due process." *McCallop v.*

1. Paragraph VII of the Petition for Hearing in the California Supreme Court in *Rios v. Cozens* (emphasis added). For the convenience of this Court, a copy of the *Rios* petition (hereafter petition) has been submitted with this brief as Appendix A.

Carberry, supra, 1 Cal. 3d at 907; 464 P.2d at 125. And again in *Cline* it was stated: "the prejudgment wage garnishment procedure attacked by plaintiff must be ruled invalid under the rationale of *Sniadach.*" *Cline v. Credit Bureau of Santa Clara Valley, supra,* 1 Cal. 3d at 909; 464 P.2d at 126. And as if to dispel any doubt on this point, the State Supreme Court in *Randone* declared: "We do no more here than follow the principle of *Sniadach,* as later expressed in our own cases of *McCallop, Cline* and *Blair.*" *Randone v. Appellate Department, supra,* 5 Cal. 3d at 564; 488 P.2d at 32. See also *Blair v. Pitchess, supra,* 5 Cal. 3d at 277; 486 P.2d at 1255.

Appellants appear to confuse the process of construing a statute with the process of determining whether a statute as construed meets constitutional standards. Less than three years ago in *Orr,* the State Supreme Court definitively set forth its *construction* of the financial responsibility statute. It is quite apparent that that Court's taking the *Rios* case is not now for the purpose of statutory construction, but for the purpose of determining whether that statute, as already construed, satisfies the *United States* Supreme Court's constitutional "rationale of *Sniadach*" and of *Bell v. Burson,* 402 U.S. 535 (1971). Surely, this Honorable Court need not defer its decision, pending the State Court's application of constitutional principles which this Court itself has enunciated.

The decision of this Court is obviously then of paramount concern to the California Court in any ruling it makes on the Financial Responsibility Law; but it should also be noted that the decision of this Court is also of immense concern to the large number of other states with similar laws whose validity is also under question.

We would thus most earnestly urge this Court not to defer its decision in the present matter, and most certainly not to favor appellants' proposal to vacate the judgment below and remand to the District Court, as this disposition could result in a grossly wasteful duplication procedures.

II. It Is the Official Policy of the Department of Motor Vehicles That a Driver Is Entitled to Examine the Reports and Evidence Against Him in Order to Determine if the Department's Action Was Proper.

In their brief in opposition to our Motion to Affirm, appellants contended that the Department refuses to permit inspection of evidence against the driver unless he files an action in court. They supported this contention with a letter from the Department refusing such inspection.

In our brief in support of our Motion to Affirm, *we conceded that the driver does have the right of inspection* and that if agents of the Department are denying him this right, such action is contrary to the law (brief in support of motion, pp. 7-8, fn. 2). To confirm that this view of the law is the official policy of the California Department of Motor Vehicles, and to avoid any future erroneous applications of the law by departmental employees, the Director of the Department of Motor Vehicles has issued a memorandum to all employees involved with the procedures in question expressly stating that a driver may see the reports against him and that he need not first file a court action. We have submitted herewith, a copy of this memorandum as Appendix B. Since we are not disputing the driver's rights in this connection and since the Department is officially committed to the implementation of these rights, it would seem that this problem is not an issue in the present case.

III. The Driver Is Entitled to a Stay Pending Court Review of the Department's Determination.

Appellants point out that, under California's Code of Civil Procedure section 1094.5(f), a court has discretion to deny a stay "if the Court is satisfied that it is against the public interest". By characterizing the availability of a stay as merely a "speculative possibility" (appellants' brief dated March 3, 1972, p. 4), appellants imply that the remedy is illusory and is subject to the caprice of the Court. However, as is apparent from the words of the statute, the Court's discretion is subject to the clearly specified criterion that continuance of the license would be against the public interest. This writer can personally represent that in the hundreds of matters he has handled, which involve California's Code of Civil Procedure section 1094.5, the denial of a stay is the rare exception. Further, with respect to the scores of cases brought to challenge the Financial Responsibility Law, this writer is unaware of *any case* where a stay has been denied. This result is consistent with, if not compelled by this Court's recognition in *Bell v. Burson, supra,* 402 U.S. at 542, that license suspension under the Financial Responsibility Law does *not* constitute an "emergency situation."

Finally, we would note that the provision is consistent with the rule concerning bail pending appeal, which is not a matter of right but is subject to denial through the exercise of the Court's discretion in appropriate cases. *Carbo v. United States,* 82 S. Ct. 662, 666 (1962).

Thus, the assertion that the full measure of procedural due process is somehow obviated, because the granting of a stay pending Court review is subject to the salutary exercise of Court discretion, is to say the least, quite tenuous.

CONCLUSION

This case very clearly presents the question of whether the Financial Responsibility Law utilizing affidavits as the means for determining a "reasonable possibility" of fault, "affords the procedural due process required by *Bell v. Burson.*" See *Jennings v. Mahoney,* 404 U.S. 25, 26 (1971). This Court has characterized this as "plainly a substantial question." *Jennings v. Mahoney, ibid.* The spurious "state issues" belatedly raised by appellants should not impede this Court from affording a prompt resolution to the question which is of great significance to California and to those numbers of other states concerned with the proper implementation of their financial responsibility statutes.

We would, therefore, respectfully submit that appellants' proposal to vacate the judgment of the Court below be rejected and that said judgment be affirmed.

Dated: March 21, 1972

Respectfully submitted,

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